

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

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Interviewing Children

In the course of a school day an educator may find herself asking kids to explain "what happened" in a given situation.

Some of these instances may involve minor skirmishes or allegations with other children or family members; others may be far more serious.

One of the common mistakes adults make in these situations is to think the more likely she is to of children as little adults. But kids are kids and don't always view a situation in the same manner as an adult.

Thus, adults interviewing children have to be very careful in their questioning and keep in mind the following:

1. Memory does not operate like a tape recorder. Children involved in the same incident may remember it very differently based on each childs' perceptions of what is important, what is consistent with his or her view of the situation, and his or her perceived role.

One child, for example, may describe a teacher as "velling" based on the student's prior experiences with the teacher. Another student may not recall the teacher raising her voice, but may remember clearly

that the teacher was sitting, standing, kneeling, etc. A third student may not remember anything at all, because the event in question had no particular significance for the student.

2. Children respond to the question asked, and the way it is asked.

The younger the child,



try and find the answer that she perceives will please the interviewer. particularly if the question is

asked multiple times.

Thus, when questioned repeatedly, a student may change his answer under the perception that his original answer must not have been correct since the interviewer keeps asking the same question.

Children may also adopt the interviewer's biases. An interview that begins with "you don't need to worry, Ms. Jones can't hurt vou anymore" gives a student a good picture about the interviewer's expectations from the interview. If that statement is reinforced by the interviewer in the questions asked, the student may adapt her answers to fit the tone of the interview.

Such a student response is not a sign of malicious intent. Rather, it is a sign that a student can perceive, consciously or unconsciously, power differences between herself and an adult interviewer and will respond accordingly.

Interviewers, therefore, need to ask neutral questions and multiple interviews (by the same or different interviewers) should be avoided if at all possible.

3. Interviewers must test several hypotheses. Ignoring information a student provides that is inconsistent with the interviewer's favored explanation of events can lead the interviewer to make erroneous conclusions. By testing several possible explanations for an event, the interviewer is more likely to discover what really happened, and ask questions that give the student the opportunity to tell what he or she witnessed, rather than what the student thinks the interviewer wants to hear.

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UPPAC CASES

- The Utah State Board of Education accepted a Stipulated Agreement for a four year suspension of Sam Brady Session's Educator License. The suspension results from Session's conviction for 3rd degree felony child abuse.
- The Board revoked the educator license of Stanley Joseph Serafin for five years. The revocation results from Serafin's possession, cultivation, use and attempt to sell marijuana.
- The Board permanently revoked Shelly Acor's educator license. The revocation results from Acor's sexual relationship with a junior high student. The relationship lasted several years. Felony trials related to Acor's conduct are pending in two jurisdictions.

Eye On Legislation

Though you can't judge a book by its title, you can make some judgments about legislation based on title and sponsor.

And so we speculate that the State Board of Education will be under fire in the 2007 legislative session.

Sen. Howard Stephenson, R-Draper, has filed three bill requests for legislation to change the State Board, State Superintendent and Office of Education.

The first bill request is titled "Creation of State Department of Education." No word yet on what this means for the State Office of Education.

Given Stephenson's second request, however, we can speculate about his intent. Stephenson has requested a resolution "Providing Appointment of State Superintendent of Education." From the two bills, it appears he might want a department of education under the governor with a superinten-

dent appointed by the governor and subject to Senate approval. This would require a constitutional amendment, however, since the superintendent is appointed by the

Stephenson's final bill request was discussed in these

State Board per the

Utah Constitution.

pages last month and reflects Sen. Stephenson's disgruntlement with the Board of Education Nominating and Recruiting Committee created by Legislators in the 2004 session.

Other bill requests have also been added to the list presented last month. No text is yet available for the bills, but bill titles give some idea of what's on the sponsors mind.

The Open and Public Meetings Act for example, may undergo further changes after a major overhaul to the law in 2006. Reps. Scott Wyatt, R-Logan, John Dougall, R-American Fork, and Wayne Harper, R-West Jordan, are sponsoring the changes to the Act.

With any luck, at least one of the three bills currently proposed will address some of the problems created by the 2006 changes. Those problems include broadened language which now suggests that meetings such as staff meetings need to be open to the public. Providing the required notice to "a newspaper of general circulation in the area" for all of the staff meetings held at the State Office alone would overwhelm a local newspaper.

In other news, Rep. Aaron Tilton, R-Springville, is proposing changes to the Driver Education curriculum. It appears he would like driver education teachers to instruct students on local accidents where young drivers have died.

UPPAC Case of the Month

Several UPPAC cases, involving a variety of misconduct allegations, share one common act of misconduct -- witness tampering.

While some educators characterize this as simply "talking to my colleagues or friends," an educator who tries to convince a witness, whether a fellow teacher, parent or student, to change his or her testimony, or not testify at all, is engaged in witness tampering.

Interfering with a witness can lead to further discipline against the educator, including increasing the potential penalty or consequences.

Like the courts, UPPAC has a rule prohibiting educators involved in the UPPAC process from intimidating, harassing or pressuring witnesses, or using others to do the intimidating, harassing or pressuring for them.

Despite the rule, educators have been known to use desperation techniques to convince witnesses

to go away.

Perhaps the most egregious example involved an educator who called a witness while his attorney was in negotiations with the UPPAC attorney the day before a scheduled hearing. The educator pressured the witness not to testify in the hearing.

Fortunately, substantial evidence of the educator's misdeeds existed without the witness and appropriate disciplinary action was taken.

Another case involved an educator promising to help a student secure a scholarship if she refrained from talking to UPPAC about the case. This effort, however, was futile since the witness' testimony was unnecessary in the end anyway.

However, the educator's actions in calling the witness and offering what was viewed as a bribe were factored into the final licensing action.

Some educators have used others to threaten students or have been more subtle in their attempts to pressure witnesses. One educator, for example, simply repeated over and over to witnesses that he had changed and would not repeat his bad conduct so they should not talk to UPPAC since he had already been punished enough.

Interfering with a witness can take many forms, but any efforts by an educator to convince a witness not to testify or to change his or her testimony is a serious breach of professional ethics. Under some circumstances, the educator's actions could result in criminal charges as well.

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Recent Education Cases

Maygar v. Clio Area School Dist. (Mich. Ct. App. 2006). A school principal sued the district and superintendent after he was transferred to the position of community education director.

The principal alleged that the transfer was in retaliation for protected speech. The district had expanded the testing window and the principal decided to survey the students about going back to the old schedule. The survey prompted several complaints from parents and students who did not want to return to the old schedule.

The court found in favor of the superintendent. The court considered "whether an employee's comments meaningfully interfere with the performance of her duties, undermine a legitimate goal or mission of the employer, create disharmony among coworkers, impair discipline by superiors, or destroy the relationship of loyalty and trust required of confidential employees."

The court found that the principal's speech was, in reality, insubordination that negatively impacted his ability to perform his duties, tipping the balance in favor of the district. The principal had presented "the issue to the teachers and students after the matter was resolved by the school board, and . . .

[proposed] a change that was directly contrary to what the board had earlier decided." This was an act of insubordination and the discipline imposed was reasonable.

Webb v. Nicholson (N.C. App. Ct. 2006). A high school principal was immune from personal liability for injuries caused to a student during a high school dance.

The principal saw the student, who did not have a ticket for the dance, leaning inside a window at the dance. The principal pulled the student out of the window and pushed him up against an exterior wall.

Unbeknownst to the principal, the student suffered from osteonecrosis. The actions of the principal left the student in need of medical treatment, including hip surgeries.

But the principal was immune from personal liability for the injuries because he was performing his duties as principal and had the discretion to use **reasonable** force to maintain discipline at a school function. As the court stated, "because supervising the school dance was a governmental function, and Nicholson was acting in

his capacity as a public official when he removed Webb from the cafeteria window, governmental immunity bars Nicholson from personal liability for negligence."

Palkovic v. Johnson (N.D. N.Y. 2006). A tenured teacher argued she was denied due process by repeated disciplinary proceedings against her.

The court ruled against the teacher, noting that the three proceedings each involved different issues. During the first proceeding, the teacher was ordered to undergo a medical evaluation. The evaluators determined she was mentally incompetent.

Following the evaluation, other questions arose about her mental stability and she was ordered to undergo a second mental health examination. She refused and the second proceeding focused on her insubordination.

The final proceeding involved her harassment and intimidation of witnesses in the first proceeding.

The court found that the three proceedings involved separate issues and met all due process requirements.

Your Questions

Q: A student with a GED wants back into his local high school. His class has not yet graduated. Should we allow him in? A: Yes. A student has a right to public education until he is 18 years old (22 if he is a special education student). A GED does not preclude the student from attending his local high school because it is not the same as a high school diploma and, therefore, the student should be enrolled in a school.

This does not mean, however,

What do you do when. . . ?

that the district has no say in placement of the student. If the student was expelled from school for safe schools violations, the district can take that history into account and make appropriate placement decisions.

Similarly, a school could counsel GED holders into adult education programs.

Q: If a student takes an electronic high school class, but is only middle school age, must the district accept the credit?

A: Yes. Changes in state law require districts to accept all credits from electronic high school and other accredited programs at face value and apply those credits to the corresponding curriculum requirement.

Thus, if a middle school student takes a high school math class through electronic high school, the

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of Education provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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student earns that credit, regardless of age.

Parents should understand, however, that, once the school accepts the credit, the grade stands. If, therefore, the student earns a B, C, D, or F in the high school course, that grade remains on the transcript.

If the student retakes the class for any reason, and does better, the school is not required to replace the first grade with the preferred grade.

Parents should also be aware that decisions about courses can affect a student's eligibility for athletics (even post-high school), extracurricular activities, and honors/awards.

Q: A student has a Confederate flag in the window of his car.
Can we tell him he must remove

it before he can park on campus? A: Not necessarily. Unless the flag is causing a disturbance in the school (kids are fighting over it in the parking lot or cafeteria, for example), the school cannot

tell a student to remove a flag, bumper sticker or other item from a vehicle based on the viewpoint expressed by the item.

Students have a free speech right to emblazon their car with messages—offensive, silly, or politically charged.

However, a student's rights to speech through his car can be curtailed. Obscene bumper stickers, for example, are not protected and the school could require that the student remove the sticker or park off campus.

Q: Under the new graduation rule, can my child take additional

art classes instead of math classes if I approve the change?

A: Probably not. R277-700-6J states that graduation requirements MAY be modified when the modifications "(1) are consistent

with the student's IEP or SEOP or both; (2) are maintained in the student's file and include the parent's/guardian's signature; **AND** (3) **maintain the in**

tegrity and rigor expected for high school graduation, as determined by the Board" [emphasis added].

The State Board plans to address the issue at its January meeting, but members of the Board seem to agree that students should complete core requirements established by the Board.

Thus, substituting ceramics for algebra will probably not be viewed as maintaining the integrity or rigor of the core requirements.